

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

Illinois Commerce Commission
on Its Own Motion,

Petitioner,

-VS-

Iowa Pacific Holdings - Chicago
Terminal Railway,

Respondent.

Citation with respect to Chicago
Terminal Railway and the failure
to maintain various highway-rail
grade crossing surfaces in
accordance with the requirements
of 92 Ill. Adm. Code
Part 1535.203.

Chicago, Illinois
April 8, 2015

Met pursuant to notice at 11:00 a.m.

BEFORE :

TIMOTHY E. DUGGAN, Administrative Law Judge.
(Appeared via videoconference)

1 APPEARANCES:

2 ILLINOIS COMMERCE COMMISSION, by
3 MR. BRIAN VERCRUYSSSE
4 527 East Capitol Avenue
5 Springfield, Illinois 62701
6 (312) 636-7760
7 bvercruy@icc.illinois.gov

8 Appearing on behalf of the Illinois
9 Commerce Commission;

10 IOWA PACIFIC HOLDINGS, LLC, by
11 MR. DAVID MICHAUD
12 118 South Clinton Street
13 Chicago, Illinois 60661
14 (312) 667-0377

15 Appearing on behalf of the Respondent.

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17

18 ALSO PRESENT:

19

20 Timothy Fuhrer - Chicago Terminal Railway

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22 SULLIVAN REPORTING COMPANY, by
Caryl L. Hardy, CSR

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I N D E X

Witnesses:	<u>Examination</u>	<u>Further Examination</u>	<u>By Examiner</u>
Timothy Fuhrer	69	72	MR. VERCRUYSSSE

E X H I B I T S

<u>Number</u>	<u>For Identification</u>	<u>In Evidence</u>
None		

1 JUDGE DUGGAN: Pursuant to the authority
2 vested in me by the State of Illinois and the
3 Illinois Commerce Commission, I now call docket
4 T14-0075 for a hearing.

5 May we have the appearances? And we will
6 start with Mr. Michaud for Chicago Terminal
7 Railway: Your name, business address, who you
8 represent, and your phone number.

9 MR. MICHAUD: Good morning, your Honor.
10 David Michaud on behalf of Iowa Pacific Holdings
11 which is the parent company of Chicago Terminal
12 Railway. Our address is 118 South Clinton,
13 Chicago, Illinois, 60661. And I'm here on behalf
14 of Chicago Terminal Railway.

15 JUDGE DUGGAN: Okay. Did you give us your
16 phone number?

17 MR. MICHAUD: I'm sorry. (312) 667-0322.

18 JUDGE DUGGAN: All right. Mr. Vercruysse?

19 MR. VERCruysse: Thank you, your Honor.

20 Brian Vercruysse, V-e-r-c-r-u-y-s-s-e, representing
21 the Rail Safety Section Staff from the Commission;
22 address 527 East Capitol Avenue, Springfield,

1 Illinois, 62701. My phone number is (312) 636-7760.

2 Thank you, your Honor.

3 JUDGE DUGGAN: All righty. And I'm not
4 sure how you said that on the record, Mr. Michaud,
5 but you are the attorney for Iowa Pacific Holdings
6 which is a corporation that is the sole owner of
7 Chicago Terminal Railway which is a separate
8 corporation; is that correct?

9 MR. MICHAUD: Yes.

10 JUDGE DUGGAN: Okay. But you're also --
11 you're here today as the attorney for the
12 second corporation, Chicago Terminal Railway; is
13 that correct?

14 MR. MICHAUD: Yes.

15 JUDGE DUGGAN: Okay. So this was set for
16 status and also for a schedule for repairs. And
17 prior to the hearing -- Mr. Fuhrer, do you want to
18 raise your right hand?

19 (Witness sworn.)

20 JUDGE DUGGAN: Thank you very much.

21 Okay. Mr. Fuhrer, prior to -- state your
22 name and spell your last name.

1 MR. FUHRER: Sure. Tim Fuhrer,
2 F-u-h-r-e-r, superintendent Chicago Terminal
3 Railway.

4 JUDGE DUGGAN: Very good.

5 And in that capacity, are you in charge of
6 the repairs to be made to North Street and
7 Division Street and their crossing with Chicago
8 Terminal Railway?

9 MR. FUHRER: Yes.

10 JUDGE DUGGAN: Okay. And pursuant to that
11 authority, did you send by email a summary of a
12 schedule for repairs to Mr. Vercruysse?

13 MR. FUHRER: Yes.

14 JUDGE DUGGAN: And that was just yesterday
15 or the day before, correct?

16 MR. FUHRER: Yes.

17 JUDGE DUGGAN: And that basically just
18 said you were going to try to get in there and do
19 these repairs at the end of April, correct?

20 MR. FUHRER: Yes.

21 JUDGE DUGGAN: Now, for the record, let it
22 show that we had a somewhat productive off-the-record

1 discussion so that we might streamline what, in
2 fact, goes on the record and I understand what's
3 going on here.

4 You do understand, Mr. Fuhrer, that the
5 Commission entered an order requiring the Chicago
6 Terminal Railway to make repairs to the crossing of
7 the Chicago Terminal Railway with North Street in
8 Chicago, as well as Division Street in Chicago; is
9 that correct?

10 MR. FUHRER: Yes.

11 JUDGE DUGGAN: Okay. And it had a date
12 for those repairs to be completed in the order and
13 that date was not met, correct?

14 MR. FUHRER: Yes.

15 JUDGE DUGGAN: And so the railroad filed a
16 request for an extension of time, right?

17 MR. FUHRER: Yes.

18 JUDGE DUGGAN: Okay. Now, who is Daniel K.
19 Marko, M-a-r-k-o.

20 MR. MICHAUD: He is the general counsel,
21 whereas I'm the associate general counsel, for Iowa
22 Pacific Holdings or also for Chicago Terminal

1 Railway.

2 JUDGE DUGGAN: Okay. And, Caryl, I guess
3 you'll make a note that that was Mr. Michaud
4 answering that question, not Mr. Fuhrer, correct?
5 Okay. Because Mr. Michaud or someone under his
6 name sent a one-page sheet request for extension of
7 time, no proof of service, no indication as to who
8 he is or whether he's an attorney or what his
9 position is. So -- if I said Mr. Michaud, I meant
10 Mr. Marko. Pardon me. Mr. Daniel K. Marko sent
11 this request for an extension of time without
12 identifying who he was. That's why I asked who
13 David Marko is.

14 His letter, for what it's worth, dated
15 November 25th refers to a November 30th deadline --
16 this is 2014 -- and represents that Com Ed and
17 Nicor, N-i-c-o-r, Gas were working on
18 Division Street locating utilities at the crossing.
19 Therefore, the business street was -- half of it
20 was closed up while Com Ed and Nicor proceeded
21 under the tracks, and therefore, Chicago Terminal
22 could not conduct their repairs at the same time

1 that Com Ed and Nicor were working there.

2 He also represents that due to the cold
3 weather, asphalt production is slow, so without
4 asphalt, that added temporary delays to their
5 contractors. And he represents they still didn't
6 have permits from the City of Chicago. Therefore,
7 they can't make the repairs by the 30th.

8 So we'll come back to that in a bit, but
9 for right now, I want to clarify that, Mr. Fuhrer,
10 you've represented here today that, in fact,
11 repairs have been made to Division Street by
12 patching with asphalt; is that correct?

13 MR. FUHRER: Correct, yes.

14 JUDGE DUGGAN: And it is your intention to
15 do a much more permanent repair or reconstruction
16 of this crossing when Division Street is
17 resurfaced; is that correct?

18 MR. FUHRER: Yes.

19 JUDGE DUGGAN: Okay. And is it correct
20 that that's why you didn't do a more permanent-type
21 repair at this time?

22 MR. FUHRER: Yes.

1 JUDGE DUGGAN: All right. Because
2 Division Street, you acknowledge there are panels
3 missing?

4 MR. FUHRER: Yes.

5 JUDGE DUGGAN: And you didn't replace
6 those panels and you didn't elevate any other
7 undulations in other panels, correct?

8 MR. FUHRER: Yes.

9 JUDGE DUGGAN: You just patched, correct?

10 MR. FUHRER: Correct.

11 JUDGE DUGGAN: Okay. And it's your
12 intention to keep an eye on that and maintain it
13 with patch until such time as Division Street is
14 reconstructed or resurfaced and then you can
15 rebuild your crossing surface; is that correct?

16 MR. FUHRER: Yes, correct.

17 JUDGE DUGGAN: What's your program to keep
18 an eye on that? How do you do that? How do you
19 monitor that?

20 MR. FUHRER: One, when we go down there on
21 a weekly basis to service the customer and we have
22 a track department that watches our track.

1 JUDGE DUGGAN: So tell me about the
2 service department.

3 MR. FUHRER: Yeah. We have a track
4 department and a foreman. He walks the rail and
5 keeps track of the property as far as maintenance.

6 JUDGE DUGGAN: How long is this particular
7 track?

8 MR. FUHRER: How long?

9 JUDGE DUGGAN: How long.

10 MR. FUHRER: The crossing, 60 feet.

11 JUDGE DUGGAN: Well, I was getting the
12 impression from an off-the-record discussion that
13 this track serves one customer?

14 MR. FUHRER: Correct, yes, Big Bay Lumber.

15 JUDGE DUGGAN: And so I also got the
16 impression that maybe the track runs back to some
17 rail yard and it may not be that...

18 MR. FUHRER: No. The whole property is
19 about three miles long.

20 JUDGE DUGGAN: Okay. That's what I asked.
21 Okay. The track is about three miles long?

22 MR. FUHRER: Yeah, on Goose Island.

1 MR. MICHAUD: Yes, three miles.

2 MR. FUHRER: Yes.

3 JUDGE DUGGAN: Okay. So this service
4 department has no responsibility other than for
5 this three miles, or does it have other track?

6 MR. FUHRER: Just this track.

7 JUDGE DUGGAN: Is the service department
8 just one person?

9 MR. FUHRER: Yes.

10 JUDGE DUGGAN: Okay. And then other than
11 that, you're saying that the -- when the trains run
12 over it, they can monitor report -- the engineers
13 can report?

14 MR. FUHRER: Yes.

15 JUDGE DUGGAN: Have you known about this
16 crossing condition for a long time?

17 MR. FUHRER: Yes.

18 JUDGE DUGGAN: Why didn't you do anything
19 about it?

20 MR. FUHRER: Because there was
21 construction going on and the plan was to fix it
22 ongoingly with blacktop or asphalt until the road

1 gets rebuilt.

2 JUDGE DUGGAN: Okay. Well, why didn't
3 that -- would you agree that that plan didn't work?

4 MR. FUHRER: Yes.

5 JUDGE DUGGAN: Okay. Why didn't it work?

6 MR. FUHRER: Time.

7 JUDGE DUGGAN: Is that -- you mean
8 priority of time?

9 MR. FUHRER: Yeah.

10 JUDGE DUGGAN: Did you realize it was
11 dangerous?

12 MR. FUHRER: It had been patched
13 accordingly to keep the biggest -- biggest ruts,
14 holes filled.

15 JUDGE DUGGAN: Not from the video I saw.
16 And that's at the prior evidentiary hearing in
17 which the railroad did not appear.

18 How would you change that in the future?
19 How would you prioritize that? How would you make
20 sure that this -- this one-person service
21 department takes care of this?

22 MR. FUHRER: Better tabs on the situation.

1 JUDGE DUGGAN: Better what?

2 MR. FUHRER: Better tabs or, you know,
3 watching it on a regular basis.

4 JUDGE DUGGAN: Are you saying tabs like
5 t-a-b-s?

6 MR. FUHRER: Yeah, you know, keeping tabs
7 on something.

8 JUDGE DUGGAN: Okay. All right. I can go
9 to North Street unless -- Brian and Mr. Michaud,
10 unless you want to ask questions about Division
11 Street before I go to North Street. Do you want to
12 take them one at a time, Brian?

13 MR. VERCruysse: I can just note for
14 Division Street, for the record, that the patch was
15 put in place and it was extensive patching and that
16 I inspected it on December 30th of 2014 and that as
17 far as continuing, we agree with the monitoring of
18 the crossing and that we also believe that there
19 should be continued coordination with Mr. Fuhrer
20 and CDOT as far as the plan for reconstruction or
21 this larger plan.

22 Other than that, I do not have questions

1 for Mr. Fuhrer regarding Division Street, but North
2 I'll hold for when you're ready. Thank you.

3 JUDGE DUGGAN: Okay. Mr. Michaud, same
4 question: Do you have anything to address with
5 Division Street alone?

6 MR. MICHAUD: Just that going forward,
7 we'll try to do a better job monitoring it. I know
8 that we've recently started -- entered into a
9 contract with a new asphalt provider and we'll just
10 try to -- once they -- I will be in communication
11 also with the city to see if I can get some -- see
12 what their plans are for when the road will be
13 reconstructed.

14 JUDGE DUGGAN: Okay. Very good. That
15 would be very helpful. Yeah. It will be a good
16 thing to address when we have a more complete
17 hearing.

18 Okay. Moving to North Street, on
19 North Street, you do, in fact, intend to do a more
20 complete, permanent repair job by replacing panels
21 or elevating them to their proper level; is that
22 correct, Mr. Fuhrer?

1 MR. FUHRER: Yes.

2 JUDGE DUGGAN: Okay. And is the present
3 delay in accomplishing that purely working out with
4 the city the permit to do so and working with
5 traffic arrangements so the city doesn't have to
6 close the road?

7 MR. FUHRER: Yes.

8 JUDGE DUGGAN: And you indicated, before
9 we went on the record, that you believe the work
10 there could take as little as two days and should
11 be done within a week at the most; is that right?

12 MR. FUHRER: Yes.

13 JUDGE DUGGAN: Okay. However, you don't
14 know what the shape of the supporting structures in
15 the crossing might be once you take out the
16 existing asphalt, correct?

17 MR. FUHRER: Correct, yes.

18 JUDGE DUGGAN: Excuse me. You have to
19 take out the existing rubber panels there; is that
20 right?

21 MR. FUHRER: Correct, yes.

22 JUDGE DUGGAN: Okay. And then you'll see

1 what you have underneath and what you have to deal
2 with, right?

3 MR. FUHRER: Yes.

4 JUDGE DUGGAN: Okay. But in any event,
5 what you want to do is start on the north end of
6 the -- of this crossing and work your way south
7 taking up one panel at a time and whatever panels
8 need to be done to do the repair work underneath
9 and move along, right?

10 MR. FUHRER: Yes.

11 JUDGE DUGGAN: Okay. And you'd like to do
12 this -- once you start it, you'd like to do it day
13 after day until it's done, right?

14 MR. FUHRER: Yes.

15 JUDGE DUGGAN: Okay. However, you don't
16 know what the city is going to let you do and how
17 that's going to gibe with the time it takes you to
18 do that? What I mean by that is simply if you
19 can't get it done by Friday afternoon and they
20 don't want to close it for the weekend, you didn't
21 get it done in that week?

22 MR. FUHRER: Yes.

1 JUDGE DUGGAN: Okay. And at that point
2 it's out of your control, right?

3 MR. FUHRER: Yes.

4 JUDGE DUGGAN: Okay. But presumably your
5 goal would be, in that worst-case situation, to
6 start again the next Monday, right?

7 MR. FUHRER: Yes.

8 JUDGE DUGGAN: Okay. And so that is your
9 plan as to work -- as soon as the city lets you
10 start working, you work your way from north to
11 south and work continuously until it's completed as
12 the city allows you to do so with their permitting
13 process and their -- their direction as to how --
14 how much the road can be closed to track, correct?

15 MR. FUHRER: Yes.

16 JUDGE DUGGAN: Okay. And you would hope
17 to do that yet by the end of this month, correct?

18 MR. FUHRER: Yes.

19 JUDGE DUGGAN: I think you told me there's
20 one person with the city that makes these
21 decisions. You can go talk to that person, work it
22 out with that person, correct?

1 MR. FUHRER: Yes.

2 JUDGE DUGGAN: All right. And that you're
3 going to be doing that attempting to make contact
4 and communicate with that person by phone and in
5 person, whatever works best, to make the contact
6 and get it done starting today, right?

7 MR. FUHRER: Yes.

8 JUDGE DUGGAN: Okay. Mr. Vercruysse,
9 anything you'd like to pursue on that or...

10 MR. VERCRUYSSSE: Yes, your Honor, a couple
11 of questions for Mr. Fuhrer relative to the
12 North Avenue crossing.

13 TIMOTHY FUHRER,
14 called as a witness, having been first duly sworn,
15 was examined upon oral interrogatories, and
16 testified as follows:

17 EXAMINATION

18 BY MR. VERCRUYSSSE:

19 Q. Mr. Fuhrer, will you remove all of the
20 panels and replace them with asphalt?

21 A. Yes.

22 Q. Okay.

1 A. That's the plan.

2 Q. In terms of -- you testified as far as the
3 track department having a foreman. Who is the
4 foreman?

5 A. Juan Martinez.

6 Q. Do you know Juan Martinez's phone number
7 off the top of your head?

8 A. No.

9 Q. Is Juan the appropriate person to contact
10 in matters of this, or should the contact be first
11 directed to you?

12 A. Me, Tim.

13 Q. Okay.

14 MR. VERCRUYSSSE: Your Honor, that's all I
15 have. Thank you. Thank you, Mr. Fuhrer.

16 JUDGE DUGGAN: Mr. Michaud?

17 MR. MICHAUD: I have no questions, your
18 Honor, no comments.

19 JUDGE DUGGAN: Okay. Would you agree with
20 Mr. Vercruysse contacting Mr. Fuhrer and
21 Mr. Martinez? Is that agreeable to you,
22 Mr. Michaud?

1 MR. MICHAUD: Yes, that's fine.

2 You know, I guess I do have a comment. I
3 just want to say we will -- you know, we'll try to
4 get this done as fast as possible. I think we're
5 just going to defer to the city as far as how to
6 control traffic, but if -- you know, if it was up
7 to us, we should be able to have it done within
8 two days assuming there's no major problems. If
9 not two days, then I think the worst -- as we've
10 discussed, the worst-case scenario would be about
11 five days, but it's dependent on the city's plan
12 for traffic control.

13 JUDGE DUGGAN: Okay.

14 MR. VERCRUYSSSE: Your Honor -- I'm sorry.

15 JUDGE DUGGAN: Go ahead.

16 MR. VERCRUYSSSE: Your Honor, I just had
17 one follow-up. I'm sorry. I should have asked
18 this initially to Mr. Fuhrer. If that's okay with
19 you...

20 JUDGE DUGGAN: Oh, absolutely.

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FURTHER EXAMINATION

BY MR. VERCRUYSSSE:

Q. Mr. Fuhrer, what is your phone number?

A. (847) 856-9537.

Q. Thank you. Is this the best number to reach you at, or do you have a cell phone number or other number that would be better?

A. That's the cell.

Q. That's the cell. Okay. Thank you.

MR. VERCRUYSSSE: That was all, your Honor.
Thank you.

JUDGE DUGGAN: Thank you.

Let me ask you this, Brian. Who did you try to contact before? Was it Mr. Marko?

MR. VERCRUYSSSE: It was Mr. Fuhrer. And then after that, it was different people in the legal department. And then also my initial letter that was sent out to Ed Ellis, the president of Iowa Pacific Holdings.

MR. MICHAUD: As far as -- if I can go back again, for communication purposes, if there's going to be any kind of written correspondence, I

1 would prefer that to go to me whether it's email or
2 a physical letter. If it's a phone call as to
3 this -- you know, where the status is, you know,
4 for some kind of on-the-job update, that would be
5 best to go to Tim. But any kind of written
6 correspondence can go to me and I can direct it
7 accordingly.

8 JUDGE DUGGAN: Mr. Michaud, you're saying
9 that Daniel Marko is the general counsel for Iowa
10 Pacific Holdings?

11 MR. MICHAUD: Yes.

12 JUDGE DUGGAN: Do you have any idea why he
13 wouldn't have returned Mr. Vercruysse's calls for
14 communications?

15 MR. MICHAUD: I do not know. You know, I
16 wasn't privy to those calls. I did come on board
17 in January. I apologize if there was any
18 non-communication. I don't think it was
19 malintended.

20 JUDGE DUGGAN: Do you -- how many people
21 are in the general counsel's office?

22 MR. MICHAUD: We've kind of changed it

1 around. It used to be -- we've had some staff
2 changes with who was in the legal department and
3 there were a couple of non-attorneys, and I have
4 been brought on to replace those -- to fill those
5 positions.

6 JUDGE DUGGAN: So before there was no
7 other attorney other than Mr. Marko?

8 MR. MICHAUD: There was one. I don't know
9 when he left, but it was Attorney Michael Noland.
10 I don't know -- I can't remember when he left,
11 but...

12 JUDGE DUGGAN: All right. Okay. Moving
13 on to the questions that have to be dealt with in
14 determining whether any penalties should be
15 imposed, I don't know that we can impose any
16 penalties for the non-communications prior to the
17 citation order. Maybe we can. Maybe we can't. I
18 don't know.

19 So I'm not really sure how much of an
20 issue that is as to telling us why neither
21 Mr. Marko, nor Mr. Fuhrer, nor anybody was
22 responsive to get anything done here. And again, I

1 can look at the citation order to find out how long
2 Mr. Vercruysse was trying to get something done.

3 But what ended up happening, of course, is
4 that after nonresponse, nonresponse that
5 unfortunately everybody got their backs against the
6 wall so that the final citation order wasn't
7 entered until November and then you guys got this
8 utility situation and the weather issue, at least
9 according to Mr. Marko's letter, that prevented you
10 from getting it done before the winter which is
11 what Mr. Vercruysse thought was necessary for
12 safety issues. So we did add one more driving
13 hazard to winter conditions.

14 So the nonresponsiveness up front was
15 certainly significant. In fact, this thing didn't
16 get done then. It's not done now. So it won't
17 hurt to be prepared with some sort of explanation
18 of that, Mr. Michaud, because, again, the Commerce
19 Commission was getting ahold of you. The Commerce
20 Commission regulates this process. The Commerce
21 Commission could have done a whole lot of stuff
22 earlier, but, you know, nobody wants to make, you

1 know, anything more difficult than it is. No one
2 wanted to drag you into it, you know. You guys
3 could be out getting stuff done, but you're here
4 because you didn't respond earlier. And we're all
5 here because you guys didn't respond.

6 So -- and frankly, disregarding the -- the
7 jurisdiction and authority of the Commerce
8 Commission pushes everybody against the wall and
9 endangers -- there's a safety concern that a car
10 could break down over the tracks. I mean, I assume
11 you guys don't go so fast that you can't stop, but
12 again, that's what the Commission does. It
13 protects safety at crossings, and you guys ignored
14 us.

15 So I think that as you come back to
16 present your case, you really need to address that,
17 Mr. Michaud. But then more specifically from the
18 time frame that you were ordered to get this done,
19 the citation order goes out, and then you guys
20 didn't even show up for that hearing. I mean, talk
21 about disregard for authority and jurisdiction and
22 safety, you didn't even show up.

1 So I really think you need -- you know,
2 most of these citation orders are resolved without
3 having to come to hearing because the railroad
4 does -- ends up doing what they're doing and says
5 how the communication is going to come out better
6 in the future.

7 So you said you're here now, address
8 things to you. That's great. I don't know -- I
9 don't know if things are going to go back to the
10 way they were or not, but I would address that more
11 than glibly -- be prepared to address that more
12 than glibly when we have our full evidentiary
13 hearing here.

14 So again, back to, from the citation order
15 forward, why you couldn't get it done in the time
16 frame we set which was admittedly a short time
17 frame and we knew we were going to have an asphalt
18 problem within a couple weeks so you'd have to jump
19 on this stuff right away, I don't know if you -- I
20 think the citation ordered was entered in early
21 November, late December or something like that --
22 excuse me -- late October. Early November or late

1 October, that's what I meant to say.

2 And, of course, then Mr. Marko cites the
3 utility issue, so I think you're going to have to
4 get some evidence, witnesses, documentation that
5 this was, in fact, stopping you that -- you know,
6 whether it's letters from Com Ed and Nicor about
7 what they were doing and, you know, how they could
8 have possibly worked together with you.

9 And your asphalt supplier -- let's see.
10 Due to cold weather, asphalt production is slow.
11 Well, slow production is not the same as no
12 production. You know, what does that mean? Does
13 that mean that -- that the contractors couldn't
14 get -- the contractors couldn't finish their other
15 jobs? I mean, he's not even representing he
16 couldn't get asphalt. He's just saying production
17 was slow, you know, and it's cold weather. Well,
18 on November 25th when he wrote this, that might
19 have been true. On the day he received the
20 citation order, which he would have received the
21 information earlier had you come to the hearing,
22 was it slow then? How long did it take you guys to

1 ramp up and get in gear and try to do anything
2 about it? You know, these are the answers to the
3 questions because other than that, you've got a
4 potential \$500-a-day penalty. You know, maybe you
5 guys don't care about a --

6 MR. MICHAUD: We certainly do.

7 JUDGE DUGGAN: -- a potential \$500-a-day
8 penalty where nothing gets done and maybe you
9 have -- maybe once you fill this out, what you're
10 saying, you may be right on point and say it's next
11 to impossible, totally unreasonable for you guys to
12 have gotten anything done at that point. But I
13 don't know.

14 What I'm suggesting is that you might want
15 to get your ducks in a row and don't just come in
16 and repeat what Mr. Marko said and don't bring in
17 Mr. Marko and have him repeat it. I'm saying prove
18 it, right? Do you understand?

19 MR. MICHAUD: Yes.

20 JUDGE DUGGAN: It shouldn't be that
21 difficult. I mean, everything is more of a pain
22 than, you know, just coming in and telling me

1 things, but -- but representations need to be made
2 as to why things couldn't be done. You know, you
3 have to make representations that -- when you've
4 got a potential penalty, you've got to be able to
5 back it up. So that's what I'm looking for.

6 Brian, do you think that there's more?

7 MR. VERCRUYSSSE: Nothing to add, your
8 Honor.

9 JUDGE DUGGAN: Okay. And do you have any
10 questions, Mr. Michaud, about anything else, how
11 you should prove something, anything else that you
12 need to prove it, I mean, how far we have to go? I
13 mean, it's always a pain when you try to prove
14 something to somebody else and you don't really
15 know how far you have to go to satisfy it, but
16 that's why I kind indicated to you, you may --
17 frankly, you're probably going to have a hard time
18 getting letters from utilities is my experience
19 with utilities, but, you know, make an effort and
20 be prepared to come in here and tell me you made an
21 effort if you don't have a letter. Find some way
22 to show that these utility guys were actually at

1 this -- now, which one was that?

2 MR. VERCRUYSSSE: That was Division Street,
3 your Honor.

4 JUDGE DUGGAN: Yeah. So he wasn't even
5 making that excuse for North Street.

6 MR. VERCRUYSSSE: Your Honor, from Staff's
7 perspective, North Avenue or Illinois 64 was always
8 our biggest concern. And for the record, that was
9 the video that was presented at the hearing. There
10 was no video for --

11 JUDGE DUGGAN: The video wasn't Division?

12 MR. VERCRUYSSSE: Yeah. The video was not
13 Division. And Division, after my inspection on the
14 30th, it was patching, but it did seem to hold and
15 take care of the immediate safety concerns.

16 The question and the concern has been
17 North Avenue and getting that done, so we look
18 forward to see this work that will be done by the
19 end of April.

20 JUDGE DUGGAN: Yeah. When you say you
21 inspected it on the 30th, the 30th of March?

22 MR. VERCRUYSSSE: I inspected the

1 Division Street crossing on December 30th of 2014
2 after --

3 JUDGE DUGGAN: So this work was done by
4 December 30th?

5 MR. VERCRUYSSSE: That's correct, your
6 Honor. They -- the railroad, on their behalf or to
7 their credit, they were able to locate and get a
8 type of asphalt mix to do the patchwork at
9 Division Street. Then we got -- then we got into
10 the cycle of -- whether it was city permit or
11 weather-driven, North Avenue just kept lagging.
12 That's not an explanation or excuse for the other
13 parts, but that's just what had happened, so...

14 JUDGE DUGGAN: Okay. Well, I would say
15 this. If you already know some things that means
16 that -- that you think some of their moves were
17 reasonable, then you can go ahead and tell me that
18 now so we're not putting them to a burden of
19 proving something that you already kind of agree
20 with.

21 MR. VERCRUYSSSE: Division Street honestly,
22 because they had completed it by the 30th and they

1 had made the effort at that point, utility letter
2 or not, it doesn't matter to me as Staff
3 personally. North Avenue has been the question,
4 and honestly what's going to speak a lot is how
5 well the work is done now by the end of April.

6 JUDGE DUGGAN: Okay. Well, it looks like
7 you're off the hook on the utility proof there,
8 Mr. Michaud, so let's -- is the problem with
9 North Street that it needed to be -- it really
10 couldn't be repaired without pulling up the panels
11 and supporting them? Is that what your
12 understanding is, Mr. Vercruysse?

13 MR. VERCRUYSSSE: Yes.

14 JUDGE DUGGAN: Okay. They couldn't do a
15 short patch on North Avenue?

16 MR. VERCRUYSSSE: No. They needed to
17 remove the asphalt -- or the panels, the rubber
18 panels as you note, yes.

19 JUDGE DUGGAN: So -- so what do you see
20 the question as for North Street as to the
21 reasonableness of them not getting it done
22 within -- by the 30th of November?

1 MR. VERCRUYSSSE: The reasonableness of
2 getting it done by the -- the end of this month?

3 JUDGE DUGGAN: No.

4 MR. VERCRUYSSSE: I'm sorry.

5 JUDGE DUGGAN: The citation order wanted
6 it to be done by November 30th. What do you see as
7 the issue in that? Is that merely getting the
8 asphalt and being able to work in the weather and
9 getting -- and dealing -- put down the asphalt in
10 the cold weather?

11 MR. VERCRUYSSSE: Honestly, I don't know,
12 your Honor.

13 JUDGE DUGGAN: Well, Mr. Fuhrer, if you
14 don't mind and, Mr. Michaud, if you don't mind,
15 I'll ask Mr. Fuhrer.

16 Mr. Fuhrer, what do you think the issue is
17 as to not getting the North Street done by the 30th;
18 in other words -- go ahead.

19 MR. FUHRER: The city would not grant us a
20 permit -- due to the time of year with Christmas
21 and North Avenue being so busy, they did not want
22 to take half of it out of service.

1 JUDGE DUGGAN: All right.

2 MR. FUHRER: Because Christmas -- you
3 know, that time of year, North Avenue is very busy
4 and Division was already closed down with all the
5 construction over there and everything was being
6 diverted to North Avenue. To have two crossings
7 out or two roads being under construction again was
8 too much, so they denied the permit.

9 JUDGE DUGGAN: And would you know,
10 ballpark off the top of your head, when you
11 submitted the permit?

12 MR. FUHRER: In November, late November
13 sometime.

14 JUDGE DUGGAN: Okay. It was late
15 November. When did they start working on Division
16 or close Division?

17 MR. FUHRER: It's been closed on and off
18 all summer. Or was.

19 JUDGE DUGGAN: Well, here's what I'm
20 getting at. Mr. Michaud, this is what I'm getting
21 at. You may have had such a small window that,
22 yeah, nothing else could be done, but you have to

1 look at the date the citation was issued, the date
2 you received it, the date you filed this permit,
3 and obviously when the permit was denied, and if
4 there's any way you can find out when Division was
5 closed during that period of time; in other words,
6 if Division was -- if you've got -- if you've
7 got -- let's say you got the citation order on
8 November 1st and Division was opened from
9 November 1st and November 20th and you guys didn't
10 apply for a permit until the 20th, well, you know,
11 you did have an opportunity. You just sat on it,
12 you know.

13 But if Division was closed the whole time
14 and you filed your permit two days after you got
15 the order, well, you did what you could do, you
16 know. Follow me on that?

17 MR. MICHAUD: Yes.

18 JUDGE DUGGAN: So, I mean, just kind of
19 look at the practicality of it.

20 And again, I would like a little more
21 than -- you know, do you have a copy of this
22 permit, Mr. Fuhrer, the application?

1 MR. FUHRER: Did I what?

2 JUDGE DUGGAN: Do you have a copy of the
3 permit that you filed in November?

4 MR. MICHAUD: For North Avenue, do you
5 have a copy of it?

6 MR. FUHRER: Not -- no. I can't remember
7 where it's at.

8 JUDGE DUGGAN: Okay. Would you have to go
9 to the city to get a copy?

10 MR. FUHRER: Probably.

11 JUDGE DUGGAN: And what about the denial?
12 How did they deny it did? Did they just call you
13 up and deny it or...

14 MR. FUHRER: We went in there and -- there
15 was some issues, and they -- because of the
16 construction and timing, they wouldn't issue one at
17 first.

18 JUDGE DUGGAN: That wasn't my question.
19 Can you hear me okay?

20 MR. FUHRER: Yeah.

21 JUDGE DUGGAN: Okay. My question was how
22 did they deny? Did they just tell you that, or did

1 they issue an order, some document or letter? How
2 did they deny it?

3 MR. FUHRER: Oh, they told us. They told
4 us.

5 JUDGE DUGGAN: Okay. So they don't --
6 there's no documentation as far as you know?

7 MR. FUHRER: Correct, yes.

8 JUDGE DUGGAN: Do you have any calendar
9 that says when you went in there and did that?

10 MR. FUHRER: I don't know if they would
11 say or not.

12 JUDGE DUGGAN: Okay. If you have to prove
13 when you went in there to do this, how would you do
14 it?

15 MR. FUHRER: Joe Alonzo and I, we went
16 over there afterwards and had a discussion with a
17 couple people in the city, and that's how we came
18 up with a different time.

19 JUDGE DUGGAN: I have no idea what you
20 just said. My question was if you had to prove the
21 date you did it, how would you prove it?

22 MR. FUHRER: Probably can't.

1 JUDGE DUGGAN: Okay. Brian, is this worth
2 pursuing?

3 MR. VERCRUYSSSE: Your Honor, I'm looking
4 back through my calendar record and there are
5 records going -- starting on November 14th where
6 there is coordination with the City of Chicago, Joe
7 Alonzo, who's their railroad coordinator and is
8 separate from their permit department, where he
9 tries to link the permit department people with
10 Mr. Fuhrer.

11 And then as we continue from there -- and
12 I'd have to go back into this in greater detail --
13 I see things then coming in -- or emails -- I'm
14 sorry -- from December 9th regarding a permit
15 denial. I would have to go back and review how
16 that transpired, but I could not speak for the city
17 on what their decision was.

18 I did hear, as noted, that there was the
19 Christmas shopping and this is a heavy commercial
20 district with every store you can imagine that it
21 would be heavy usage, but I do see a permit
22 application that was submitted by Eman Bungui.

1 MR. MICHAUD: She's a former paralegal
2 with our -- who's no longer in our -- she's no
3 longer with us, but she was in the legal
4 department.

5 MR. VERCRUYSSSE: So in regards to pursuing
6 this further and seeing where the railroad was
7 versus the City of Chicago or Chicago Department of
8 Transportation, I guess the question is having
9 somebody from the City of Chicago here. Joe Alonzo
10 was at our first hearing, but I know counsel from
11 Chicago was not present, so I don't know if there's
12 something that you would like in that respect to
13 have the city present. The citation doesn't note
14 them specific. It's just Iowa Pacific Holdings and
15 the Chicago Terminal Railway. So do you --

16 JUDGE DUGGAN: No. I mean, if Alonzo
17 knows -- knows what happened -- and obviously he's
18 an independent witness, so he's not going to be
19 biased for the railroad one way or the other, I
20 wouldn't think. I mean, if Alonzo comes in and
21 tell us something that happened, that's, I think,
22 reliable for us.

1 MR. MICHAUD: He's the person I do intend
2 to contact today to discuss the plans for
3 North Avenue.

4 JUDGE DUGGAN: Well, I mean, maybe get a
5 feel from him as to whether he thinks that the
6 railroad's excuse is legitimate or not. And I
7 understand it's a short time frame. You'd have to
8 jump right on it. I do understand it. The problem
9 is you did need to jump right on it, you know, even
10 after you were approved so long.

11 But, you know, like you said, if you did
12 jump on it and you still couldn't get it done
13 because of the city, you know, that's the way it
14 goes.

15 But you said something about a
16 December 9th permit?

17 MR. VERCRUYSSSE: Your Honor, it was
18 when -- initially, I guess, there was discussions
19 with -- Mr. Alonzo, November, had first provided
20 what the permit requirements were to the city;
21 here's the documents you need to fill out; here's
22 what we expect from you. And then my trail goes

1 cold until that December 9th calendar record I have,
2 and that's when the emails start back up for me.

3 JUDGE DUGGAN: Well, maybe -- let me say
4 this. Maybe -- do you know Alonzo, Mr. Michaud?

5 MR. MICHAUD: I do not, but I will -- no.
6 I do not know him.

7 JUDGE DUGGAN: Well --

8 MR. FUHRER: I do.

9 JUDGE DUGGAN: -- I guess with this in
10 mind, you tell me what you think the best way to go
11 about this is, Brian. If you're going to talk to
12 him, you get a feel for that. I don't know if
13 Mr. Michaud needs to talk to him or not, but then
14 we could have a status -- a phone status. And if
15 what he says is that he called, our concerns about
16 whether the railroad acted diligently after the
17 citation order, then -- you know, I think
18 Mr. Michaud is going to be doing a lot of other
19 work trying to prove it to me.

20 So do you have any other ways to approach
21 it, you think, more efficiently or more -- more
22 certainly?

1 MR. VERCROYSSSE: Is that to Mr. Michaud or
2 to me, your Honor?

3 JUDGE DUGGAN: That's to you, Brian. Or
4 Mr. Michaud, if you want.

5 MR. MICHAUD: I think that's for you to
6 confirm that Joe Alonzo will corroborate what we're
7 saying.

8 MR. VERCROYSSSE: We can call and contact
9 Mr. Alonzo and discuss this and we can include --
10 set up a conference call that works with your
11 schedule so that he can provide their points. That
12 would work fine.

13 JUDGE DUGGAN: Okay. But do you want to
14 talk to him preliminarily and just get a view that
15 it seems to work? If it's simple enough, then you
16 could just relay to me by a phone conference. You
17 don't even have to try to include Alonzo. I guess,
18 Brian, if you're satisfied, then -- you don't think
19 that -- you think it's simple enough, then probably
20 maybe you don't need to include him. If you think
21 there's any -- if you think it's better to have him
22 on the phone and it's convenient to do, let's do

1 it. I'll leave that up to your judgment. Okay?

2 MR. VERCRUYSSSE: That sounds good. Thank
3 you. We'll contact you and provide dates back to
4 you from all of the parties that would work for a
5 phone conference and see if it works with your
6 schedule.

7 JUDGE DUGGAN: Okay.

8 MR. VERCRUYSSSE: Okay.

9 JUDGE DUGGAN: So you're going to talk to
10 Mr. Michaud about what Alonzo says or --

11 MR. VERCRUYSSSE: Correct.

12 JUDGE DUGGAN: Okay. You guys work it out
13 then?

14 MR. VERCRUYSSSE: Yes.

15 JUDGE DUGGAN: Mr. Michaud, do you
16 understand?

17 MR. MICHAUD: Understood, yeah.

18 JUDGE DUGGAN: Okay.

19 MR. MICHAUD: Just for the North Avenue
20 plans, we can -- if you would like us to copy you
21 on the emails, you know, on whatever the plans are,
22 we can do that, too, so we're all kept abreast of

1 what's going on.

2 JUDGE DUGGAN: Copy Brian. You don't want
3 to copy me.

4 MR. MICHAUD: No. I know. I meant Brian.

5 MR. VERCRUYSSSE: That's fine.

6 JUDGE DUGGAN: Well, you know, I've been
7 copied and I always appreciate the effort, but
8 sometimes -- if anybody wanted to make an issue out
9 of things, I don't want to deal with that issue,
10 so -- you know, me getting information outside of
11 court, you know.

12 So all right. Well, then let's just leave
13 it at that. I will wait to hear from you guys.
14 And then we'll probably have another phone status
15 at some point and then decide if -- if we do get to
16 the evidentiary hearing, we hopefully know what
17 we're going to do. Okay? Does that sound
18 reasonable to everybody? Mr. Michaud?

19 MR. MICHAUD: Yes. Just to be clear, so
20 long as Mr. Vercruysse is satisfied with Joe
21 Alonzo's comments on why North Avenue was delayed,
22 then there's no additional requirement for -- for

1 me to provide evidence, correct?

2 JUDGE DUGGAN: Well, if Mr. Vercruysse is
3 satisfied and it's a simple explanation, then all
4 I'm saying is at that point, we could have a phone
5 statute without Mr. Alonzo present. At that point
6 I may or may not have other questions. And if I
7 don't and I am in agreement or I'm sat- -- and
8 Brian is satisfied, then I'm okay, too. If that
9 happens, then we'll still have to find out how
10 we're going to address the simple penalty issue and
11 put this on the record. You know, maybe we'll just
12 do a written stipulation, you know, but I've got to
13 submit, I think, something to the -- I do have to
14 submit something to the Commission on the citation
15 order -- I've got to follow up. I've got to have
16 something on the record explaining why we didn't
17 penalize you or why we did penalize you or whatever.

18 When I say that, I don't mean me. I just
19 report to the Commission. You know, I make
20 recommendations to them. Okay?

21 But yeah, if we end up with an explanation
22 and everybody is on board, then yeah, a written

1 stipulation might be the easiest way to go. So
2 we'll figure -- we'll cross that bridge after we
3 talk to Alonzo and we have a phone status. Okay?

4 Does that answer your question,
5 Mr. Michaud?

6 MR. MICHAUD: Yes.

7 JUDGE DUGGAN: So you don't have to look
8 yet.

9 MR. MICHAUD: Okay. Is there anything
10 else that you would -- that your Honor would like
11 from us in your consideration of whether to
12 recommend, you know, any penalties other than the
13 proper -- proper and swift completion of the
14 North Avenue crossing?

15 JUDGE DUGGAN: Yeah. I think we've just
16 got to wait and see what -- how Alonzo fills in and
17 corroborates enough to say -- do you know what I
18 mean? I do think -- you know, like I said, if you
19 look -- when you receive a citation -- and
20 obviously if you receive -- if it's issued on
21 one day, certainly we can assume you received it by
22 seven days later because you may not have a

1 "received by" stamp in your office, but, you know,
2 I mean, if Alonzo knows the time frame of the
3 permits, then that's what we've got to kind of gibe
4 to see if you guys sat around for a month or
5 two weeks and it was, you know, 80 degrees out in
6 November and you didn't do anything. Well, we've
7 got to think about that.

8 So what else do I need from you? I don't
9 know. Look and see whether you can document it
10 out, when you got the thing, and whatever you can
11 find out about what you did. But it sounds like
12 you need to talk to Alonzo first because it sounds
13 like Mr. Fuhrer doesn't have records. He doesn't
14 know. If Alonzo coordinated with the city, then I
15 guess then he's the one to talk to rather than
16 having to go to the city first. Obviously I would
17 hope the city would have records -- a copy of the
18 application, but maybe not.

19 But that's what I'm saying. You just talk
20 to Alonzo first. Then if he doesn't know anything
21 or -- you know, you might want to -- Mr. Michaud,
22 you might want to at least call the permit

1 department up and the permit guy up and say, hey,
2 do you have records, do you have a copy of the
3 permit, and then fax it to you. You know, you can
4 do that. All right?

5 MR. MICHAUD: Yes.

6 JUDGE DUGGAN: Yeah. And if -- do you
7 have any record of when you denied it? He goes,
8 yeah, I keep a ledger. Well, would you fax me a
9 copy of the ledger, you know, something like that.
10 Just -- you know, make a phone call and see
11 whatever he's got. And we'll see what Alonzo says
12 in the meantime and -- and you guys get together on
13 a phone status. Okay?

14 MR. MICHAUD: Yes.

15 JUDGE DUGGAN: And your chances are not
16 being foreclosed. I'm just trying to figure out
17 what we did today. So we made a lot of progress so
18 we know what kind of proof you are going to have.
19 Just because I didn't think of it today doesn't
20 mean anybody is precluded. It's an ongoing
21 process. Okay? Good deal?

22 MR. MICHAUD: Yeah. And I would like to

1 apologize for our non-appearance at the evidentiary
2 hearing. I wasn't here, but I can't imagine it was
3 done willfully. I -- my assumption is it was an
4 internal miscommunication.

5 JUDGE DUGGAN: All right. I appreciate
6 that.

7 So all right. So we will just continue
8 generally until I get notice that a phone status
9 will be helpful.

10 Is it agreeable for Brian to email me with
11 that or to call me to tell me you're ready for a
12 phone status, Mr. Michaud?

13 MR. MICHAUD: Yes.

14 JUDGE DUGGAN: Okay. And you can do the
15 same thing. If you're ready, you can get ahold of
16 me. Okay?

17 MR. MICHAUD: Yeah.

18 And, your Honor, I think I may have given
19 you the wrong phone number in the beginning. That
20 needs to be changed. If I may look at my phone
21 because I gave our general number...

22 It's (312) 667-0377 is my direct line.

1 MR. VERCRUYSSSE: Okay. Thank you.

2 JUDGE DUGGAN: You better give that to me

3 one more time.

4 MR. MICHAUD: (312) 667-0377.

5 JUDGE DUGGAN: Okay. All right.

6 MR. MICHAUD: It's probably a public record.

7 JUDGE DUGGAN: Right, yeah. It's in there

8 somewhere.

9 Okay. This is continued until further

10 notice. Very good. Thank you.

11 MR. MICHAUD: Thank you, your Honor.

12 MR. VERCRUYSSSE: Thank you.

13 (SINE DIE.)

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